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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 403

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, VIRGIL ROGERS and WILLARD RICHARDS,

Petitioners,

v.

PANAMA STEAMSHIP COMPANY, LTD., a corporation, et al.,

Respondents.

BRIEF FOR RESPONDENTS

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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BRIEF FOR RESPONDENTS

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

STATUTES AND TREATY PROVISIONS INVOLVED

In addition to the statutes cited by petitioners and included in the appendices to their brief, respondents believe the following statutes and treaty provisions relevant to the decision of this case:

Title 28 U.S.C. Section 1333

Sec. 1333. *Admiralty, maritime and prize cases.*— The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

* * *

(June 25, 1948, c. 646, 62 Stat. 931, amended May 24, 1949, c. 139, Sec. 79, 63 Stat. 101.)

Title 28 U.S.C. Section 1350

Sec. 1350. *Alien's action for tort.*— The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. (June 25, 1948, c. 646, 62 Stat. 934.)

Treaty Of Friendship, Commerce, And Navigation Between The United States And The Republic Of Liberia, Signed At Monrovia, August 8, 1938

* * *

Article VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation. (54 Stat. 1742)

* * *

Article XV

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party who flag is flown. (54 Stat. 1745)

QUESTIONS PRESENTED

On the complaint of the Liberian corporate shipowner, Liberian corporate time charterer and Greek master of the Liberian Flag vessel, SS Nikolos, the district court enjoined an American union and its members from picketing that ship while temporarily present at an American port for the purpose of discharging a cargo loaded abroad. The picketing was in protest of the wages and working conditions aboard the vessel, which were below those prevailing on competing United States flag vessels on which the union's members were employed. The wages and working conditions were satisfactory to the Nikolos' entirely alien and predominately Greek crew and were both in accord with the provisions of the ship's articles which had been opened abroad under Liberian law and in accord with an agreement between the shipowner and various Greek unions. The questions presented are:

1. Did the district court have jurisdiction and injunctive power in this case:

(a) Under 28 U.S.C. Section 1333, because of petitioners' intentional interference with respondents' maritime contractual rights and the movement of a vessel on navigable waters; or, if admiralty has not adequate equitable remedial power, under 28 U.S.C. Section 1331, because of applicable federal maritime law derived from Article III, Section 2 of the Constitution? (The court of appeals answered, "No" to the former alternative, "Yes" to the latter.)

(b) Under 28 U.S.C. Section 1350, as a civil action by aliens for tort in violation of their maritime rights derived from the law of nations? (Not considered below.)

(c) Under both 28 U.S.C. Section 1331 and Section 1350, as a civil action for tort by aliens for violation of their rights arising under a Treaty? (Not considered below.)

2. Absent any expression of extra-territorial intent by Congress, may the literal sweep of the Norris-La-Guardia Act definition of "labor dispute" be applied to a dispute over terms and conditions of employment by a foreign shipowner of alien seamen under shipping articles opened abroad under foreign law for service aboard a foreign flag vessel, merely because that vessel is transiently in a United States port on an international voyage and competes with United States flag vessels on which American labor is employed? (The court of appeals held not.)

STATEMENT OF THE CASE

The SS Nikolos was a merchant vessel registered under the Liberian flag. It arrived at the Port of Tacoma, Washington on June 10, 1957, to discharge a full cargo of bulk salt which it had loaded in Mexico. (Findings V and VII, Tr. 32, 33)

It was intercepted in the harbor by the Will-O-Bee, a small cabin cruiser owned and operated by some of petitioners. This began to circle about the Nikolos displaying signs "PICKET BOAT" (Findings IX and X, Tr. 33). Later an additional sign was displayed reading, "AFL-CIO seamen protest loss of their livelihood to foreign flag ships with sub-standard wages or sub-standard conditions" (Tr. 60).

Petitioners also threatened the consignee of the cargo with establishment of a picket line at its dock if it allowed the Nikolos to berth there (Finding XI, Tr. 33).

Petitioners' activities had their intended effect: the consignee of the salt refused the ship a berth at its dock, tugs declined to assist the vessel to a berth, and the Nikolos was forced to remain at anchor in the harbor (Findings XII, XIV and XV, Tr. 34).

Respondents Panama Steamship Company, Ltd., Seatankers, Inc. and Socrates Paleocrassas, respectively the owner, time charterer and master of the Nikolos (Findings I, II and III, Tr. 31), then filed a complaint (Tr. 3-10) in the United States District Court for the Western District of Washington, Southern Division,

seeking damages and temporary and permanent injunctive relief against petitioners. An order to show cause why a temporary injunction should not be granted issued (R. 22-23) and extensive hearings were held, at which petitioners' sole contention was that the existence of a "labor dispute" within the meaning of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. § 101 et seq, deprived the Court of jurisdiction to issue an injunction.

The respondents are all aliens (Findings I, II, III, Tr. 31), the shipowner and time charterer being incorporated under the laws of Liberia (Tr. 88, 91) and the master a Greek citizen (Tr. 13).

The crew of the vessel were all aliens serving under articles of employment made subject to the laws of Liberia (Finding VI, Tr. 32). The evidence was that the crew were predominately Greek nationals (Tr. 13) and members of Greek maritime unions (Tr. 69-70). The wage scale on the vessel equaled or exceeded those specified in a labor agreement to which the Greek unions and the owners were parties (Tr. 14); but were far below those paid on United States flag vessels on which members of the union petitioner worked (Tr. 113). There was no dispute between respondent and the crew of the vessel (Tr. 14).

Petitioners did not even claim that there was and expressly disclaimed any contact or affiliation with the crew members (Tr. 28). Rather, petitioners' claim of "labor dispute" was based on the undisputed facts that their activities were without fraud or violence (Finding XXIII, Tr. 36) and that, as a result of the shipment

of salt from Mexico aboard the Nikolos and proposed shipments aboard other foreign flag vessels, American flag vessels manned under contracts with American unions had lost or would lose such business with resultant loss of employment opportunities to members of these American unions, including petitioner Marine Cooks and Stewards (Finding XXIV. Tr. 36-37).

The court found, however, that petitioners' activities constituted "acts of unlawful interference with international commerce and particularly the right of plaintiffs to carry out an international voyage and maritime contract of affreightment with a vessel lawfully registered by a friendly foreign nation manned by an alien crew under foreign shipping articles" (Finding XIII, Tr. 34). It concluded that "the term 'labor dispute' as used in the Norris-LaGuardia Act does not contemplate a dispute foreign in nature" (Conclusion II, Tr. 37).

Finding substantial and irreparable damage to respondents (Findings XV, XVII, Tr. 34, 35), as well as irreparable damage to the obligations and relations of the United States with friendly maritime nations (Finding XVIII, Tr. 35) and that no remedy existed at law (Finding XXI, Tr. 36), the district court issued an interlocutory injunction (Tr. 40-43). At the request of petitioners' counsel (Tr. 134), this enjoined picketing or otherwise interfering with discharge of cargoes not only from the Nikolos but also from other foreign flag vessels, manned by aliens under foreign articles and owned, operated or chartered by respondents.

Appealing from this, petitioners at first placed sole

reliance on the Norris-LaGuardia Act (Tr. 137). The Court of Appeals for the Ninth Circuit found, as this Court had of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. § 141 et seq in *Benz v. Compania Naviera Hidalgo S.A.* (1957), 335 U.S. 138, that, "the whole background of the Act is concerned with industrial strife between American employers and employees," and held the Act inapplicable to labor disputes arising solely out of conditions on a foreign vessel.

The court of appeals also dealt with a contention that the district court lacked jurisdiction of the complaint, which petitioners had raised by supplemental briefs and in oral argument. It found jurisdiction under 28 U.S.C. Section 1331, holding that the case arose under the Constitution and laws of the United States because of the federal nature of respondents' maritime rights infringed by petitioners. It distinguished *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), which held that a seaman's maritime tort action for personal injuries was not intended to be within a district court's jurisdiction under 28 U.S.C. Section 1331 because a completely adequate jurisdiction for it existed in admiralty under 28 U.S.C. Section 1333. The court of appeals held that admiralty could not issue an injunction and therefore did not provide a completely adequate jurisdiction for this case.

By petition for rehearing, petitioners for the first time challenged the district court's finding that respondent Seatankers, Inc. was a foreign corporation and also for the first time contended that the Clayton

Act, 38 Stat. 738, 29 U.S.C. § 52, prevented their conduct from being unlawful. By *per curiam* opinion the court of appeals held these questions not properly before it, but left them for consideration of the district court in proceedings for damages or permanent injunctive relief.

Petitioners then sought the writ of certiorari, which the Court granted.

SUMMARY OF ARGUMENT

The Treaty of Friendship, Commerce and Navigation between the United States and the Republic of Liberia, 54 Stat. 1739, requires recognition of the SS Nikolos as a Liberian vessel while in territorial waters of the United States and establishes the right of respondents to engage in commerce with that vessel and its cargo in our ports.

The court of appeals correctly held that petitioners' intentional interference with the movement of the vessel and the maritime contracts entered into by respondents constituted a tort under federal maritime law, *The Poznan*, 276 Fed. 418 (S.D. N.Y., 1921); *Sidney Blumenthal & Co., Inc. v. United States*, 30 F.2d 247 (2 Cir., 1929), *cert. den.* 279 U.S. 847.

Admiralty jurisdiction of respondents' suit for this maritime tort would unquestionably exist under 28 U.S.C. Section 1333 were they seeking only a remedy in money damages. If that were the case, under the decision of this Court in *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), the applicability of

federal maritime law would not warrant alternative jurisdiction under 28 U.S.C. Section 1331. The question of jurisdiction under those sections arises here, however, because respondents sought not just damages but also injunctive relief, which was awarded.

The court of appeals held that such relief could not be awarded in admiralty under Section 1333. In this it followed the statements of this Court in *The Eclipse*, 135 U.S. 599 (1890) and *Schoenamsgruber v. Hamburg-American Line*, 294 U.S. 454 (1935). Those statements, however, are dictum, or as the Court has described them "loose talk," *Swift and Company Packers v. Compania Colombiana Del Caribe*, 339 U.S. 684 (1950). In that case the Court held that equitable relief could be granted in admiralty when sought, "in the course of admiralty's exercise of its jurisdiction over a matter exclusively maritime." This is also the plain meaning of the statements in *Romero* that, "All suits involving maritime claims, regardless of the remedy sought, are cases of admiralty and maritime jurisdiction . . ." and, "The federal admiralty courts had been completely adequate to the task of protecting maritime rights rooted in federal law."

That respondents' pleading was labeled "complaint" instead of "libel," a misnomer affecting no substantive or procedural right, will not defeat this jurisdiction, *Confiscation Cases*, 87 U.S. 92 (1874).

If, however, equity may not enjoin even the restrainable activities of petitioners committed on navigable waters and infringing respondents' maritime contractual

rights, then the reasoning of *Romero* is inapposite to deny the district court jurisdiction under Section 1331 in this case. *Romero* recognized that a maritime tort claim was governed by federal law derived from Article III, Section 2 of the Constitution. A bare majority, nevertheless, felt that Congress did not intend such to be a case within the plainly descriptive "all civil actions . . . wherein the matter in controversy . . . arises under the Constitution, laws . . . of the United States," because of the "long established, smoothly functioning" and "completely adequate" admiralty jurisdiction. Such would not be the case here.

Nor should the Court's expressed concern for preserving a concurrent state forum apply to make the state courts the exclusive forum for adequate vindication of important federal rights.

Two bases of jurisdiction, independent of those already discussed, exist. First, the maritime law is derived from the law of nations, *De Lovio v. Boit*, Fed. Case No. 3776; *Lauritzen v. Larsen*, 345 U.S. 571 (1952); and this is a "civil action by an alien for tort only, committed in violation of the law of nations," for which jurisdiction is provided by 28 U.S.C. Section 1350. Second, both that section and Section 1331 provide jurisdiction of a tort action for violation of treaty rights. A treaty of friendship, commerce and navigation is self executing and an alien may sue to restrain infringement of a right to engage in commerce granted under it. *Asakura v. Seattle*, 265 U.S. 332 (1924). Respondents did so here.

The literally universal language of American labor legislation has always been construed to affect only employment within the territorial limits of the United States unless Congress clearly expressed a broader coverage. *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957); *Foley Bros. Inc. v. Filardo*, 336 U.S. 281 (1949); *Air Line Dispatchers Ass'n. v. National Mediation Board*, 189 F.2d 685 (D.C. Cir., 1951), *cert. den.* 342 U.S. 849. Similarly, United States laws will not be construed so as to affect the internal economy of a foreign flag vessel without explicit direction by Congress, *Benz v. Compania Naviera Hidalgo*, supra; *Lauritzen v. Larsen*, 345 U.S. 571 (1953); *Romero v. International Terminal Operating Co.*, supra. Petitioners ignore these canons of construction in asking that the universal definition of "labor dispute" in the Norris-LaGuardia Act, 47 Stat. 73, 29 U.S.C. Section 113 (c) be applied to their efforts to change the terms and conditions of employment aboard a foreign flag vessel only transiently in our waters on an international voyage.

The Norris-LaGuardia Act contains no express statement that it is to be applicable to disputes involving employment on foreign ships or in foreign commerce generally. Its legislative history clearly limits the intent of Congress to disputes affecting the employment of workingmen in our own country. The definition of "labor dispute" in the Act is virtually identical to that in the Taft-Hartley Act, which the Court confined to domestic limits in the *Benz* case.

The decisions of this Court interpreting the term "labor dispute" in the Act which petitioners cite all

deal with domestic disputes and furnish no support for extra-territorial application. In fact two of these, *United States v. United Mine Workers*, 330 U.S. 258 (1947) and *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), show that the Act is not applied even to domestic disputes within its literal sweep but outside the Congressional purpose.

Section 20 of the Clayton Act, 29 U.S.C. Section 52, is, as petitioners' brief admits, applicable here only, "if the Norris-LaGuardia Act applies." It furnishes no independent protection to their activities, only such as comes from its implied amendment by the Norris-LaGuardia Act, *United States v. Hutcheson*, 312 U.S. 219 (1940). Since, however, where Norris-LaGuardia does apply it thus affects substantive rights, petitioners are wrong in stating that it regulates only "the District Courts, not litigants or their rights."

There are no substantial American interests here which warrant application of American labor legislation. The consignee of the cargo was American; but there will be American shippers or consignees of cargo on nearly every foreign vessel which comes to our ports. Equally every foreign ship in our ports is in competition with United States flag vessels organized by American union labor. These factors were present, but not deemed significant, in *Benz*. Petitioners urge that the foreign corporate time charterer be considered American because of American stockholdings in it. The time charterer, had, however, no control of the labor conditions on the vessel. The shipowner, not it, hired and paid the crew.

Respondents seek no special privilege for a foreign shipowner or employer as such. Obviously our laws apply to an alien employer of labor in the United States. They do not apply, without specific direction of Congress, to an American employer of workmen, even American workmen, in foreign employment, *Foley Bros., Inc. v. Filardo,* supra. If an American corporation were in the place of respondents there would still be no labor dispute in this case, because the employment is aboard a foreign flag vessel only transiently in our waters on an international voyage.

Congressional legislation to provide subsidies and other protection for the American Merchant Marine is expressly limited in scope and recognizes the fact of foreign flag competition. If petitioners wish to enlarge that protection they should address themselves to Congress, not the Courts, *Lauritzen v. Larsen,* supra.

ARGUMENT

I. The District Court Had Jurisdiction Of This Cause Under 28 U.S.C. Sections 1331, 1333 And 1350.

Petitioners urge that the decision of this Court in *Romero v. International Terminal Operating Co.,* 358 U.S. 354 (1959) requires dismissal of this case for lack of jurisdiction of the subject matter in the District Court under either 28 U.S.C. Section 1331 or Section 1333. Not only does no reasonable reading of that decision require such a result, but there is here an alternative basis of jurisdiction under 28 U.S.C. Section 1350. Before exam-

ining the *Romero* decision, it is well to review the nature of the subject matter of this suit.

A. *Petitioners' Interference With Respondents' Right To Engage In International Maritime Commerce Was Tortious.*

The SS Nikolos, Liberian vessel, entered the harbor of Tacoma, Washington with a cargo of salt loaded in Mexico and to be discharged at a dock of the consignee of the cargo, Hooker Electro Chemical Company (Finding V, Tr. 32). As a registered Liberian vessel in territorial waters of the United States, its status as a Liberian vessel must be recognized under Article XV of the Treaty of Friendship, Commerce and Navigation Between the United States and the Republic of Liberia, 54 Stat. 1739:

"ARTICLE XV

"Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown." (54 Stat. 1745)

The Nikolos was owned by respondent Panama Steamship Company and under time charter to respondent Seatankers, Inc., both Liberian corporations (Findings I and II, Tr. 31 and Tr. 88, 91). The right of these alien corporations to thus engage in commerce arises under the same Treaty between this country and Liberia:

"ARTICLE VII

"Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation." (54 Stat. 1742)

The activities of the petitioners in operating a picket boat on the navigable waters of the harbor and about the SS Nikolos induced the crew of a tug to refuse to assist the vessel to a discharge berth. In addition, petitioners' threats of a picket line at the consignee's plant and its resultant fear of disruption of plant operations induced it to refuse to provide a berth for discharge as required by its contract of affreightment (Finding XIV, Tr. 34). The Court found these to be the intended results of petitioners' activities (Finding XII, Tr. 34). While petitioners made no concrete demands the meeting of which would result in their discontinuance of these activities, it is clear from the affidavit (Tr. 24-29) of petitioner Willoughby that they would have been satisfied with nothing less than abrogation of another existing maritime contract, the articles of employment aboard the vessel.

Intentional interference with maritime shipment and contracts constitutes a maritime tort of which admiralty has jurisdiction, as the court below held (265 F.2d at 782, Tr. 144). In *The Poznan*, 276 Fed. 418 (S.D. N.Y., 1921) the suit was by the shippers of cargo aboard the

vessel against the owner of the vessel for inducing the breach of contracts of shipment entered into between the charterer of the vessel and the shippers. Judge Learned Hand held:

> "Now it is well settled law in federal courts that where a third party procures an obligor to break a contract, he commits a tort against the obligee. Angle v. Chic., etc., Co., 151 U.S. 1, 14 Sup. Ct. 240, 38 L. Ed. 55; Bitterman v. Louisville, etc., R. R., 207 U.S. 205, 28 Sup. Ct. 91, 52 L. Ed. 171, 12 Ann. Cas. 693. In short, the rule first laid down in Lumley v. Gye, 2 E. & B. 216, has been fully accepted, and is even extended beyond cases where the injured party has a contract.
>
> * * *
>
> "Was it, then a martime tort over which the admiralty will take jurisdiction? Confessedly, that question depends rather on historical than a priori considerations. Ordinarily it is the locus of the tort which governs, and where the injury is on the water though the defendant's act was on the land, that locus is determined by the water. Hermann v. Port Blakely Mill Co. (D.C.) 69 Fed. 646; Atlee v. Packet Co., 21 Wall. 389, 22 L. Ed. 619; The Normannia (D.C.) 62 Fed. 469, 472; Greenwood v. Westport (D.C.) 60 Fed. 560. Perhaps, not every tort committed at sea is within the jurisdiction of an admiralty court. Atlantic Transport Co. v. Imbrovek, 234 U.S. 52, 60, 61, 34 Sup. Ct. 733, 58 L. Ed. 1208, 51 L.R.A. (N.S.) 1157. At least for the purposes of this case I may assume that the injury must be maritime in its character as much as though the case sounded in contract. The injury here was the breach of contract of carriage itself, the effective cause of which was the act of the Polish Company. Obviously if that contract was maritime enough in its character to base a libel upon it in contract, the injury resulting from the wrongful act on shore was as maritime, because it was the same thing." (276 Fed. at 433-434)

Again in *Sidney Blumenthal and Co., Inc. v. United States*, 30 F. 2d 247 (2 Cir., 1929), *cert. den.* 279 U.S. 847, that court of appeals held that a third party who prevented the performance of a bill of lading by deliberate transshipment of the goods covered was liable to the shipper. It held:

> "The jurisdiction of the admiralty over such a tort admits of no question: it took place upon navigable waters, which is prima facie the test. Atlantic Transport Co. v. Imbrovek, 234 U.S. 52, 34 S. Ct. 733, 58 L. Ed. 1209, 51 L.R.A. (N.S.) 1157. It is true that in that case the question was left open whether there might not be torts committed on the water of which the admiralty would not take cognizance. Assuming as much, and that therefore the quality of the act may at times be determinative, this was a maritime transaction; it was a part of the carriage of goods by sea, unauthorized, indeed, and so wrongful, but no different for that reason from any other carriage. If any tort be maritime, certainly this was one." (30 F. 2d at 248-9)

Indeed if we understand petitioners' argument correctly they do not question that interference with maritime contracts and the movements of a vessel are maritime torts (Petitioners' brief, p. 24). Rather, their argument is that the very maritime nature of this cause limits federal jurisdiction to jurisdiction in admiralty where, so they argue, injunctive relief is unobtainable. As the following discussion shows such a denial of federal jurisdiction to do justice in a maritime cause is inconsistent with *Romero*.

B. *This Court's Decision In Romero Is Susceptible Of Only Two Reasonable Interpretations And Under Either The District Court Had Jurisdiction Of This Suit.*

The answer to the questions of maritime jurisdiction under 28 U.S.C. Secs. 1331 and 1333 would seem to lie in the interpretation to be placed upon the following language, and particularly the italicized portion, from the Court's decision in *Romero*:

> "The provision of the Act of 1875 with which we are concerned was designed to give a new content of jurisdiction to the federal courts, not to reaffirm one long-established, smoothly functioning since 1789. We have uncovered no basis for finding the additional design of changing the method by which federal courts had administered admiralty law from the beginning. *The federal admiralty courts had been completely adequate to the task of protecting maritime rights rooted in federal law.* There is not the slightest indication of any intention, or of any professional or lay demands for a change in the time-sanctioned mode of trying suits in admiralty without a jury, from which it can be inferred that by the new grant of jurisdiction of cases 'arising under the Constitution or laws' a drastic innovation was impliedly introduced in admiralty procedure, whereby Congress changed the method by which federal courts had administered admiralty law for almost a century." (358 U.S. at 368) (emphasis added)

There are three possible interpretations of the italicised sentence:

1. That the Court meant exactly what it said and that federal admiralty courts have all power necessary to the task of protecting maritime rights rooted in federal law, including equitable remedial powers.

2. That the Court was not thinking in terms of a case where equitable remedial powers were necessary to the task of protecting maritime rights rooted in federal law but intended only to comment on the adequacy of admiralty procedure in the type of case before it, where a remedy in damages was adequate and could be obtained in admiralty.

3. That the Court recognized that federal admiralty courts do not have equitable remedial powers but felt that such powers were unnecessary to the task of protecting maritime rights rooted in federal law.

The last of these interpretations is too unreasonable to merit serious consideration. The district court found that respondents were sustaining irreparable damage and would continue to sustain irreparable damage unless petitioners' activities were enjoined (Findings XVII, XIX, Tr. 35, 36). It also found that petitioners' conduct might cause irreparable damage to the relations of the United States with other friendly maritime nations (Finding XVIII, Tr. 35). These unchallenged findings clearly show that if respondents were entitled to relief, they were entitled to the equitable remedy of injunction granted by the court. And, while this and lower federal courts have frequently said that admiralty courts do not possess the remedial powers of equity, including injunction, they have never denied that there are maritime cases in which such relief is necessary to justice.

Each of the other possible constructions, however, deserves serious consideration on the basis not only of other language in the *Romero* decision but also of past

pronouncements of the Court. With each, however, jurisdiction of the district court in this case is consistent.

1. If Admiralty Courts May Issue Injunctions When Necessary To The Task Of Protecting Maritime Rights Rooted In Federal Law, Then The District Court Had Jurisdiction And Power To Enter The Decree In This Suit Under 28 U.S.C. Section 1333.

There can be no doubt that admiralty would have jurisdiction of this cause and that substantive maritime law would control if on these facts respondents requested only damages as a remedy. The case does not in some mysterious way cease to involve maritime rights rooted in federal law merely because equitable relief is requested. Regardless of whether a prayer for additional injunctive relief results in classification of the suit jurisdictionally as one "in equity" as two judges of the court below felt (265 F.2d at 783-785, Tr. 145-149) or not, the Court made clear in *Romero* that it remains substantively a case "of admiralty and maritime jurisdiction".

> "All suits involving maritime claims, regardless of the remedy sought, are cases of admiralty and maritime jurisdiction within the meaning of Article III whether they are asserted in the federal courts or, under the saving clause, in the state courts. Romero's claims for damages under the general maritime law are a case of admiralty and maritime jurisdiction. The substantive law on which these claims are based derives from the third provision of Art. III, Sec. 2, cl. 1. Without that constitutional grant Romero would have no federal claim to assert. Cf. 2 Story, Commentaries on the Constitution of the United States, Sec. 1672." (358 U.S. at 367, n. 23)

Admiralty treatises are, however, full of statements to the effect that admiralty courts do not possess the

remedial powers of equity and cannot issue injunctions, Gilmore and Black, The Law of Admiralty, at p. 37 (1957); 1 Benedict on Admiralty, at pp. 148-149 (6 ed. 1940). Indeed, these expressions find basis in the language of this Court:

> "While the court of admiralty exercises its jurisdiction upon equitable principles, it has not the characteristic powers of a court of equity." (*The Eclipse*, 135 U.S. 599, at 608) (1890)
>
> "While courts of admiralty have capacity to apply equitable principles in order the better to attain justice, they do not have general equitable jurisdiction and, except in limitation of liability proceedings, they do not issue injunctions." (*Schoenamsgruber v. Hamburg-American Line*, 294 U.S. 454 at 457) (1935)

Closely examined, however, these statements appear to be mere dictum. Thus, in *The Eclipse*, supra, the relief sought was the winding up of a trust and the enforcement of a contract for the sale of a vessel and, as the Court noted, "There was nothing maritime about the claims" (135 U.S. at 608). Similarly, in *Schoenamsgruber*, supra, the question was whether the trial of a libel claiming damages for personal injury to a passenger on a vessel could be stayed pending arbitration required by the terms of the contract between the passenger and carrier. The Court held that it could. In doing so it noted that an order of stay was not an interlocutory injunction. Its language as to the availability of injunction in admiralty was wholly unnecessary to the decision in the case.

As this Court noted in *Swift and Company Packers*

v. Compania Colombiana Del Caribe, 339 U.S. 684 (1950), these statements are no more than "a good deal of loose talk," 339 U.S. at 690; and the true principle is that a court of admiralty will not enforce an independent non-maritime claim merely because it pertains to maritime property, as was the case in *The Eclipse*, but will exercise equitable powers when necessary to justice in admiralty transactions or to the enforcement of maritime rights. In that case a libel had been brought in personam for non-delivery of cargo with a foreign attachment of a vessel other than the one in which shipment had been made. There was no claim in rem. The respondent asserted that it was not the owner of the vessel attached. The libelant alleged that respondent had fraudulently transferred the vessel and asked the court to set aside the transfer. The court granted that relief, holding:

> ". . . The issue of fraud arises in connection with the attachment as a means of effectuating a claim incontestably in admiralty. To deny an admiralty court jurisdiction over this subsidiary or derivative issue in a litigation clearly maritime would require an absolute rule that admiralty is rigorously excluded from all contact with non-maritime transactions and from all equitable relief, even though such equitable relief is sought, in the course of admiralty's exercise of its jurisdiction over a matter exclusively maritime. It would be strange indeed thus to hobble a legal system that has been so responsive to the practicalities of maritime commerce and so inventive in adapting its jurisdiction to the needs of that commerce. Controversies between admiralty and common law are familiar legal history. See Mr. Justice Story's classic opinion in De Lovio v. Boit, 7 Fed. Cas. 418, No. 3,776, 2 Gall. 398; 4

> Benedict on Admiralty cc. 61-63 (Knauth ed. 1940). We find no restriction upon admiralty by chancery so unrelenting as to bar the grant of any equitable relief even when that relief is subsidiary to issues wholly within admiralty jurisdiction. Certainly there is no ground for believing that this restriction was accepted as a matter of course by the framers of the Constitution so that such sterilization of admiralty jurisdiction can be said to have been presupposed by Article III of the Constitution." (339 U.S. 684 at 691-692)

In a case such as this, the ability to grant equitable relief should be even clearer. Here there is no subsidiary non-maritime transaction such as the transfer of the vessel in that case. The injunction is required to do justice in a case involving restrainable activities being conducted on navigable waters and interference with wholly maritime transactions.

That the language of the cases denying admiralty power to issue injunctions and grant other equitable relief in cases otherwise properly within admiralty jurisdiction is, as the Court described it, "loose talk" has been well documented in Morrison, The Remedial Powers of Admiralty, 43 Yale L. Rev. 1 (1933). The author shows that such denial is wholly inconsistent with the broad maritime jurisdiction of this country, with the recognition of equitable principles and defenses in the same courts which deny affirmative relief, and even with the once limited British admiralty jurisdiction; that it is based on no lack of Constitutional or statutory authority, and that the only possible explanation of it arises from the carry-over of a common law-equity dichotomy to which many of our judges were accus-

tomed and under which they mistakenly equated admiralty with common law powers. The author concluded,

> "If the separate admiralty jurisdiction has any value, it is absurd to force the litigant elsewhere merely because, upon the same subject-matter, justtice demands some remedy other than money damages in tort or for breach of contract." (Id. at 33)

This view is also shared by more recent commentators. See e.g. Gilmore and Black, The Law of Admiralty, at p. 37 (1957).

If the district court, as an admiralty court, had the power to grant the injunctive relief which it in fact gave, then concededly this case would fall within 28 U.S.C. Section 1333. *Romero* would be no obstacle to such jurisdiction, although it would then bar alternative maritime jurisdiction under Section 1331.

Petitioners may argue that such admiralty jurisdiction was not invoked; but the difference between captioning respondents' pleading a libel in personam and a complaint should certainly not require dismissal. Particularly so where that difference in nomenclature affecting no substantive or procedural right occurred in a pleading filed under the stress of irreparable injury, went unchallenged in the district court and was in accord with the weight of dicta if not holdings of the federal courts. In the converse situation this Court long ago ignored a misnomer of a common law action as in admiralty:

> "The substance and all the requisites of a common law proceeding are found in the record. Technical niceties are not required either in admiralty or revenue cases." (*Confiscation cases*, 87 U.S. 92, at 110) (1874)

The Supreme Court is clearly authorized to direct whatever may be necessary to continue or dispose of the suit "in admiralty," 28 U.S.C. 2106.

2. If The District Court's Admiralty Powers Were Inadequate To Protect Respondents' Maritime Rights The Romero Decision Would Not Operate To Deny Jurisdiction Of This Case Under 28 U.S.C. Section 1331, As "Arising Under The Constitution, Laws . . . Of The United States".

This Court has warned that,

> " . . . it would be beyond human achievement even of a long line of judges especially equipped for dealing with admiralty matters to have produced a wholly harmonious body of admiralty law or to have written opinions when concentrating on specific issues that should not have lent themselves through largeness or looseness of statement beyond the scope of their adjudication." (*Swift & Company Packers v. Compania Colombiana Del Caribe*, 339 U.S. 684 at 690) (1950)

It is possible, therefore that this Court in *Romero* did not intend what it said to apply to cases which its language would cover but which differed factually from that before it. Certainly the language surrounding the Court's statement that "admiralty courts had been completely adequate" shows that its attention was focused not on remedies but on "the method by which federal courts had administered admiralty law," i.e. on "the time-sanctioned mode of trying suits in admiralty without a jury."

If this be true, however, it is at once apparent, as the court of appeals held, that the reasoning of the *Romero* decision works to exclude, rather than include, this case from its ambit.

If the Court was concerned in *Romero* with preservation of trial without a jury in maritime causes, there is no need for concern here. Equity, of course, proceeds without a jury in exactly the same manner as admiralty and the court of appeals directed that such further proceedings as may occur in connection with the claim for damages be so heard (265 F.2d at 786, Tr. 150).

Again in *Romero* the Court expressed concern for preserving in the states their historical concurrent jurisdiction of admiralty causes where the common law is competent to provide a remedy. But it is one thing to save a concurrent state forum and quite a different thing to deny any federal forum and leave state courts as the only place for the vindication of important federal rights. If admiralty may not enjoin there is a plain distinction between *Romero* and this case in the lack of adequate alternative remedy here.

Petitioners seek to find a lack of admiralty remedy in *Romero* by urging that the jury trial there sought by plaintiff was a remedy not available in admiralty. In that they mistake a mode of proceeding to ascertain facts for a remedy. The remedy sought in *Romero* was obviously not a jury trial but a judgment in money damages.

Both the majority opinion and the dissenting opinions in *Romero* agree that the cause of action there was one at least in some sense arising under the Constitution of the United States. The minority felt that there was no sound reason for departing from the plain language of the Judiciary Act of 1875 in order to exclude it as a

case "arising under the Constitution, laws . . . of the United States" within the meaning of that statute, now 28 U.S.C. Section 1331. The majority found a reason in the "long established, smoothly functioning" admiralty jurisdiction providing an adequate federal forum for *Romero*. That reasoning should not apply to exclude any plaintiff entirely from a federal forum; and particularly from the forum provided by the plain language of a statute under which it has been said that the federal courts ". . . became the primary and powerful reliance for vindicating every right given by the Constitution, laws and treaties of the United States," Frankfurter and Landis, The Business of the Supreme Court, at 65 (1927).

Yet, here, petitioners seek that strange result in the type of cause for which the founding fathers deemed it most essential that there be a federal forum:

> "The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace." The Federalist No. 80.

C. *The District Court Also Had Jurisdiction Of This Claim By Aliens For A Maritime Tort In Violation Of Their Treaty Rights And Rights Under The Law Of Nations, Under 28 U.S.C. Sections 1331 and 1350.*

Independent bases for the jurisdiction of the district court exist under 28 U.S.C. Section 1331 and 1350, growing out of the tort claims based on violations of both treaty rights and rights under the law of nations. The

concern of the founding fathers for a federal forum to protect the rights of aliens just referred to was also expressed in the Judiciary Act of 1789. Section 9 of that Act, immediately following the provision of admiralty and maritime jurisdiction, gave the federal trial courts jurisdiction of any "civil action by an alien for tort only, committed in violation of the law of nations, or a treaty of the United States," 1 Stat. 77. Although general provision was made for jurisdiction of any civil action arising under the treaties of the United States in the Judiciary Act of 1875, there has been no repeal of the earlier statute and it remains as 28 U.S.C. Section 1350. The general provisions of the Act of 1875 introduced the amount in controversy requirement, which did not exist in the specific provision as to treaty claims of aliens in the Act of 1789 and does not now exist in Section 1350.

That the framers of the Constitution and the first Judiciary Act considered maritime law to be part of the law of nations has long been recognized in the decisions of the federal courts from the famous opinion of Mr. Justice Story in *De Lovio v. Boit*, Fed. Cas. No. 3776, to the recent elaboration by Mr. Justice Jackson in *Lauritzen v. Larsen*, 345 U.S. 571 (1952). The claim of respondents, as alien plaintiffs, for tort in violation of their maritime rights founded in the law of nations is therefore authorized under this section.

In addition, their rights to engage in commerce in the ports of the United States arise under the Treaty of Friendship, Commerce and Navigation between the United States and the Republic of Liberia, 54 Stat. 1739

(1939). That such treaties are more than a compact between nations and confer enforceable rights upon private individuals, and specifically the right to sue to restrain interference with the rights granted by the treaty, is shown by *Asakura v. Seattle,* 265 U.S. 332 (1924). In that case the Court held the Japanese plaintiff entitled to an injunction against the City of Seattle and its officers from enforcing against him an ordinance barring him, as an alien, from engaging in the business of pawn broker, a pursuit to which the Court found him entitled under a treaty between the United States and Japan.

As early as *Foster and Elam v. Neilson,* 27 U.S. (2 Pet.) 253 (1829), Chief Justice Marshall said,

> "Our constitution declares a treaty to be the law of the land. It is consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision." (27 U.S. at 314)

The fact that provisions of treaties of friendship, commerce and navigation are necessarily self-executing was emphasized in a dissenting opinion by Justice Field in *Baldwin v. Franks,* 120 U.S. 678 (1887). Although this question was not decisive of the issue then before the Court, Justice Field's persuasive analysis is nonetheless material. He noted:

> "These stipulations operate of their own force; that is, they require no legislative action for their enforcement." (120 U.S. 704)

He further analyzed such provisions as follows:

> "The right or privilege being conferred by the treaty, parties seeking to enjoy it take whatever steps are necessary to carry the provisions into ef-

> fect. Those who wish to engage in commerce enter our ports with their ships and cargoes; . . . no congressional legislation being required to provide that they shall enjoy the rights and privileges stipulated." (120 U.S. at 704)

In proclaiming the Treaty of Friendship, Commerce and Navigation between the United States and the Republic of Liberia on November 30, 1939, President Roosevelt did so,

> "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America *and the citizens thereof*." (54 Stat. 1750, emphasis supplied)

It is thus clear that the Treaty both confers enforceable rights on respondents and imposes corresponding duties on petitioners. Their existence is recognized and a forum for their enforcement provided by both 28 U.S.C. Sections 1331 and 1350.

II. Petitioners' Conduct Was Not Absolutely Privileged By Either The Clayton Act Or The Norris-LaGuardia Act; Nor Was There A "Labor Dispute" Within The Meaning Of The Latter Act So As To Deprive The District Court of Jurisdiction To Issue An Injunction.

Petitioners' argument in attempting to establish the presence of a "labor dispute" within the meaning of the Norris-LaGuardia Act, 29 U.S.C. Section 101ff., is truly amazing. At the outset they correctly state that ". . . respondents deny the existence of a labor dispute because petitioners picketed a foreign vessel employing a foreign crew" (Pet. Brief 10). They further acknowledge, ". . . nor do we understand respondents to argue that

foreign corporations per se are not subject to the restrictions of the Norris-LaGuardia Act" (Pet. Brief 11). Yet their entire argument is thereafter predicated on the proposition that respondents are trying to establish a special position for foreign shipowners. A dozen times between pages 16 and 24 of their brief they attack this "foreign shipowner," "foreign owner," "foreign plaintiff" and "foreign employer" who they have already admitted to be an irrelevant straw man.

Not once do they again advert to the facts of foreign registry, foreign articles and alien employees. There is no discussion of those canons of construction which have consistently led the courts to deny applicability of maritime and labor legislation to foreign vessels and foreign employment without explicit direction of Congress. Neither the language of the Act nor its legislative history is analyzed in the light of such canons.

The reasons for thus avoiding all relevant principles and authorities will become quickly apparent: None of them support their position.

A. *The Literally Universal Language Of American Labor Legislation Has Been Consistently Construed To Affect Only Employment Within The Territorial Limits Of The United States.*

In *Foley Bros. Inc. v. Filardo*, 336 U.S. 281 (1949), the court was faced with the question whether the Federal Eight Hour Law, 40 U.S.C. Sections 321-326, applied to work performed by an American citizen for an America employer, doing work on bases of the United States in Iran. This particular Act contained universal

language of "every laborer" and "any contractor or subcontractor" without limitation to the territorial United States or domestic labor.

In holding the Eight Hour Law was intended by Congress and should be applied by the courts only to situations within the territorial jurisdiction of the United States, the Supreme Court stated:

> "No distinction is drawn therein (in the Act) between laborers who are aliens and those who are citizens of the United States. Unless we were to read such a distinction into the statute we should be forced to conclude, under respondent's reasoning, that Congress intended to regulate the working hours of a citizen of Iran who chanced to be employed on a public work of the United States in that foreign land. Such a conclusion would be logically inescapable although labor conditions in Iran were known to be wholly dissimilar to those in the United States and wholly beyond the control of this nation. *An intention so to regulate labor conditions which are the primary concern of a foreign country should not be attributed to Congress in the absence of a clearly expressed purpose.*" (336 U.S. 281 at 286). (Emphasis supplied)

The Railway Labor Act has similarly been held inapplicable to employees of American airlines in foreign countries. In *Air Line Dispatchers Ass'n v. National Mediation Board*, 189 F. (2d) 685 (D.C. Cir., 1951), cert. den. 342 U.S. 849, a decision of the National Mediation Board that it had no jurisdiction over representation of airline dispatchers in foreign countries was affirmed. The court noted:

> "Explicitness is to be expected from Congress if its intention is to extend the legislation extraterritorially." (189 F. (2d) at 690-91)

Another example of this principle is the construction placed on the war-time Civilian Leave Act which granted "all civilian officers and employees" a pay leave. When plaintiff Filipinos sued, the court of claims held in *Luna v. United States,* 108 F. Supp. 510 (Ct. Cl. 1952), that though the words were literally universal, the Congressional intent could only be domestic coverage. The court made the astute observation:

> "We think that a decision that Section 30b was applicable to persons situated as was the plaintiff would be, in effect, snatching at an inadvertent lapse of attention on the part of Congress. . . . This case illustrates the inherent wisdom of the canon of construction to which we have referred above, that laws are presumed not to be applicable in foreign territory unless an intent that they should be so applicable is shown." (108 F. Supp. at 513)

Most significantly, the Labor Management Relations Act of 1947 (Taft Hartley Act), 29 U.S.C. Section 141ff, was similarly limited to domestic applicability when construed by this Court only three years ago in a case factually almost identical to this. In *Benz v. Compania Naviera Hidalgo, S. A.,* 353 U.S. 138 (1957), the court affirmed a judgment against American unions for the damages caused by their picketing of a Liberian flag vessel, owned by an alien corporate shipowner, while that vessel was temporarily present at a United States port on an international voyage. In that case, as this, an alien crew was employed aboard the vessel under articles opened abroad and subject to foreign law. There, as here, the American unions were picketing for the purpose of forcing a change in those articles and the reemployment

of the foreign crew on terms and conditions comparable to those on American flag vessels.

The question decided by this Court was whether the Labor Management Relations Act of 1947 applied to the controversy so as to pre-empt jurisdiction of the district court to award damages. The Court said,

> "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws." (353 U.S. at 143)

After reviewing the legislative history of the Act, the Court again commented,

> "What was said inescapably describes the boundaries of the Act as including only the working men of our own country and its possessions." (353 U.S. at 144)

That the court correctly interpreted the bounds of the Act is to be inferred from the fact that Congress, in passing the Labor-Management Reporting and Disclosure Act of 1959, continued to use the same definitions of "employer," "employee" and "labor dispute" in Section 3 of that Act as had formerly been in the National Labor Relations Act and Labor Management Relations Act, which it amends and supplements. See Public Law No. 86-257, 86 Cong., 1st Sess., Section 3 (Sept. 14, 1959) 1959 U. S. Code Cong. and Adm. News, at 2956-2957. Further support for the Court's refusal to apply general labor laws to foreign ships is found in the fact that in the sole instance in which Congress legislated on labor relations in the maritime industry it expressly limited the scope of the Act to United States

flag vessels, Title X of Merchant Marine Act 1936, 52 Stat. 965, 966 (1938) as amended by 55 Stat. 259 (1941). This Act was passed three years after the National Labor Relations Act of 1935 and as a "supplement" to it. See the statement of Mr. Justice Douglas, dissenting, in *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485, at 499 (1947). American labor legislation, including the Norris-LaGuardia Act, written in universal terms for industries of all kinds, should be construed, when sought to be applied in the maritime industry, in conformity with the jurisdictional limits thus expressed by Congress in the only instance in which it legislated on the same subject for that particular industry.

B. *United States Laws Will Not Be Applied To Matters Affecting The Internal Economy Of A Foreign Flag Vessel Temporarily Within A United States Port Without Explicit Direction By Congress.*

Not only is there a canon of construction favoring territorial limitation to United States labor legislation; but there is also a canon of construction against the extension of our labor laws to foreign flag vessels.

In *Benz v. Compania Naviera Hidalgo, S.A.*, supra, this court reviewed a long series of Acts of Congress dealing with hiring and pay of seamen which the court at one time or another had been urged to apply to foreign vessels (353 U.S. at 144-146). It observed that such legislation had only been applied to effect the internal economies of foreign vessels upon the specific direction of Congress. In its discussion, the Court further noted that the National Labor Relations Board had

declined jurisdiction to select a collective bargaining agent for foreign seamen on a Panamanian vessel owned by a Panamanian corportion, "on the ground that the internal economy of vessel of foreign registry and ownership was involved," *Compania Maritima Samsoc Limitada*, Case. No. 20-RC-809, May 1, 1950, CCH NLRB Decisions, 1950-1951, Para. 10,081.

Two other recent decisions of this Court have emphasized the practical necessities which lie behind recognition of the law of the flag in matters pertaining to the internal economy of a vessel. In *Lauritzen v. Larsen*, 345 U.S. 571 (1953) and in *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), the Court was urged to encompass foreign seamen injured aboard foreign flag vessels within the literal sweep of the universal "any seaman" of the Jones Act, 46 U.S.C. Section 688. In each case the Court held that the law of the flag must be looked to for the seaman's remedy. In *Lauritzen v. Larsen*, the Court stated,

> "Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. . . .
>
> "This Court has said that the law of the flag supersedes the territorial principle, even for purposes of criminal jurisdiction of personnel of a merchant ships, because it 'is deemed to be a part of the territory of that sovereignty (whose flag it flies), and not to lose that character when in navigable waters within the territorial limits of another sovereignty.' . . .

"Some authorities reject, as a rather mischievous fiction, the doctrine that a ship is constructively a floating part of the flag-state, but apply the law of the flag on the pragmatic basis that there must be some law on shipboard, that it cannot change at every change of waters, and no experience shows a better rule than that of the State that owns her." (345 U.S. at 584-585)

In *Romero*, the Court reiterated the principles:

"The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this Court is adjudicating issues inevitably entangled in the conduct of our international relations." (358 U.S. at 383)

* * *

"To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country." (358 U.S. at 384)

Here the existing contract of employment, the articles of the vessel, were opened at Cardiff, Wales under the law of Liberia and expressly incorporated terms and conditions of employment at or above those negotiated between Greek owners and Greek unions for employment on Greek flag vessels (Tr. 13, 14). The employees here were predominantly Greek and members of those Greek unions (Tr. 13, 69-70). Petitioners would force a change in that contract. But this was exactly the purpose of the picketing in the *Benz* case where the Court said,

"The seamen agreed in Germany to work on the foreign ship under British articles. We cannot read into the Labor Management Relations Act an intent to change the contractual provisions made by these parties. For us to run interference in such a delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed. It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain." (353 U.S. at 146)

C. *Neither The Language Nor The Purpose Of The Norris-LaGuardia Act Makes It Applicable To This Case.*

The Norris-LaGuardia Act contains no express statement that it is to be applicable to disputes involving employment aboard foreign ships or in foreign commerce generally.

Petitioners claim, nevertheless, that under the literal language of the Act there is a labor dispute here. They concede that there was no dispute between the foreign crew and the foreign shipowner (Pet. Brief 5). To support their contention, however, they cite *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938) and *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U.S. 91 (1940), each of which held that the Act's coverage protected activities of non-employees seeking to promote their supposed economic interests. These cases, however, involved purely domestic employment situations and are of no help whatever in finding a Congressional intent to apply the Act extra-territorially. The decision in *Benz* negates any possibility

of finding such intention in the definiton of labor dispute. The definition of labor dispute in the Labor Mangement Relations Act of 1947 is found in 29 U.S.C. Section 152(9):

> "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association of representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

The definition in the Norris-LaGuardia Act is found in 29 U.S.C. Section 113(c) and is identical, except that it includes only the phrase, "terms or conditions of employment" instead of the broader "terms, tenure or conditions of employment".

It would be strange indeed if Congress had used one such definition in the Norris-LaGuardia Act with intent to apply it to foreign shipping and had used substantially the same definition again in the Taft-Hartley Act without that intent. Particularly is this true in relation to two Acts which have the common purpose of promoting collective bargaining. Compare the statement of purpose in the Norris-LaGuardia Act, 29 U.S.C. 102, with the statement of purpose in the Taft-Hartley Act at 29 U.S.C. Section 151. As the court of appeals noted in denying applicability of the Norris-LaGuardia Act here,

> "If the Norris-LaGuardia Act was applicable here, the combination of such a holding and the holding in Benz that the Taft-Hartley administrative remedies are not available would result in there being no federal agency or court in which foreign com-

merce could seek protection. Such a result in the field of international commerce and relations should not be arrived at without more explicit direction from Congress." (265 F. 2d 780, Tr. 151)

The only two other cases which petitioners cite, supposedly in support of their argument, are *United States v. United Mine Workers*, 330 U.S. 258 (1947) and *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957). But the only point relevant to this case which we can derive from those decisions is that the Norris-LaGuardia Act will not be applied literally even in domestic situations but rather given limited application consistent with the fundamental purpose of the Act to promote collective bargaining.

In *United States v. United Mine Workers*, supra, the Court held the Norris-LaGuardia Act inapplicable to bar an injunction against the United Mine Workers in a dispute between it and the government, which had taken over operation of coal mines in this country and was acting in the commonly accepted status of an employer. Looking at the policy of the Act, rather than its literal language, the Court stated,

> "The purpose of the Act is said to be to contribute to the worker's 'full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives . . . for the purpose of collective bargaining . . .' These considerations, on their face, obviously do not apply to the Government as an employer or to relations between the Government and its employees." (330 U.S. at 274)

Again in the *Lincoln Mills* case, supra, the court expressly noted that,

> "A literal reading might bring the dispute within the terms of the Act." (353 U.S. at 458)

It nevertheless held that a federal court could enforce arbitration since such was not contrary to the policy of the Norris-LaGuardia Act where provided for by a labor agreement arrived at after collective bargaining. Certainly nothing in those cases indicates that Congress intended that the Act should be applied literally where the dispute involves foreign employment even though such is not done in cases of domestic employment.

Petitioners can point to no language of the Act nor to any case interpreting it which even hints that Congress intended its definition of labor dispute to apply to a case such as this. And they will find no comfort in the legislative history of the Act.

D. *The Legislative History Of The Norris-LaGuardia Act Inescapably Confines Its Reach To Disputes Involving Domestic Employment.*

A thorough search of the legislative history of the Norris-LaGuardia Act has revealed nothing which could be said in the slightest to show an intent to make the Act applicable to disputes over conditions of employment aboard a foreign flag vessel. Rather, the following excerpts indicate the contrary.

Congressman Dyer, speaking in favor of the bill, stated that it was:

> " * * * necessary for the Congress to declare for the United States a policy affecting American labor.". (75 Congressional Record, p. 5465)

And Congressman Blanton, speaking in opposition to the bill, said:

> "I believe earnestly in a proper American standard of wages, and an American standard of working conditions, and an American standard of working hours." (75 Congressional Record, p. 5482)

The testimony of witnesses before Congressional Committees makes even clearer the domestic contemplation of the Act. Walter G. Merritt, representing the League for Industrial Rights, testified as follows:

> " . . . it is proposed . . . .to dictate the conditions under which employers and employees shall live together in the industries throughout the United States." (Hearing on H. R. 5315 Before the House Committee on the Judiciary, 72d Cong. 1st Sess., ser. 3, at 48 (1932)

A spokesman for labor, Joseph Padway, General Counsel, Wisconsin State Federation of Labor, showed the domestic intent of the bill's sponsors:

> "Well, a labor dispute is a matter that can be taken into the State Courts very easily. It affects a situation that is generally within the confines of the State border. . . . I can not see why the disputes should not be settled right in the State courts of the State where the dispute arises, where the men, where the employees and the employers are, where the plant is located." (Hearing on S. 1482 Before A Subcommittee of the Senate Committee on the Judiciary, 70th Cong., 1st Sess. at 573) (1928)

Since the Court indicated in *United States v. Hutcheson*, 312 U.S. 219 (1940) that the Norris-LaGuardia Act was to be construed as an amendment of Section 20 of the Clayton Act, 38 Stat. 738, 29 U.S.C. Section

52, we have also examined the Congressional debates and committee proceedings in connection with that statute. Nothing whatever has been discovered which would shed the slightest light on the present problem or indicate that Congress in any way considered applying it so as to effect foreign employment.

E. *The Clayton Act Gives Petitioners' Conduct No Protection Independent Of The Norris-LaGuardia Act.*

Petitioners urge that, "if the Norris-LaGuardia Act applies", their conduct is privileged completely, and not merely against federal injunctive relief, by the Clayton Act (Pet. Br. 23). The reason for the qualifying phrase is obvious.

Section 20 of the Clayton Act, 29 U.S.C.A. Section 52, describes certain labor activities and concludes, "Nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." That language was, however, promptly held to be applicable to the described activities, including picketing, only where they were engaged in by employees in a dispute with their own employer. *Duplex Printing Press Co. v. Deering*, 254 U.S. 433 (1921). It is admitted that there is no such dispute here (Pet. Br. 5). Even though the limits thus placed on the Clayton Act by judicial construction were removed by the implied amendment of the Norris-LaGuardia Act, as held in *U. S. v. Hutcheson*, supra, the conduct would still be protected only when participated in pursuant to the enlarged definition of labor dispute in the Norris-LaGuardia Act.

Thus, this argument is wholly dependent on establishing first that the term "labor dispute" in the Norris-LaGuardia Act was intended by Congress to apply to a dispute over terms and conditions of employment of aliens on a foreign flag vessel. That petitioners have not done.

Parenthetically, it may be noted, however, that this argument disproves another of petitioners' contentions. If the Norris-LaGuardia Act through implied amendment of the Clayton Act grants an absolute privilege to conduct, it is not just "regulating the District Courts, not litigants or their rights." (Pet. Br. 21). Like the Taft-Hartley Act, Norris-LaGuardia affects both substance and procedure where it applies.

F. *Petitioners' Attempted Distinctions Of The Benz Case Are Without Merit.*

Petitioners urge that in this case there are substantial American interests involved which were not involved in the *Benz* case and which should result in applicability of American labor legislation to the case. What are they?

Petitioners might first point to the fact that there was an American consignee of the cargo. But in nearly every case of a ship touching our ports there will be either an American consignee or shipper involved. The Court's opinion in the *Benz* case noted the findings in that case that the vessel had come to the United States port to load a cargo of wheat and complete certain repairs (353 U.S. at 139). That it did not consider these facts significant is shown by its statement that

> "The only American connection was that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing." (353 U.S. at 142)

That quotation also shows the lack of significance of the "American contact" which the union sees in the employment of its members aboard vessels in the salt trade between Mexico and the United States. In *Benz*, the Court ignored an identical argument made by the unions that their economic interests in vessels engaged in the grain trade between United States and India were threatened by the wage scale aboard the Liberian vessel involved in that case. The statement of that point appears in the brief of the unions' counsel as summarized in 1 L. ed. 2d 2044, and was set forth in Mr. Justice Douglas' separate dissenting opinion, 353 U.S. 147.

Finally, petitioners argue that here the foreign corporate charterer of the vessel should be considered American because of American ownership of its stock. No such claim was made at the district court's hearings and petitioners did not object to the finding of the trial court that the charterer of the vessel was a foreign corporation (Finding II, R. 31). The court of appeals refused to consider this contention on rehearing because of failure to present it on the appeal; but noted in its opinion denying rehearing that,

> "In its statement of the case made by petitioner in its opening brief (page 3) reference to ownership and charter parties appear, from which no inference of American control can be logically drawn, indeed the inference is quite the opposite." (268 F.2d at 936, Tr. 154-155).

Assuming for the sake of argument, however, that the charterer were not foreign as the court found but American, it is hard to see any significance in this. The charterer of the vessel, Seatankers, Inc., was not the employer of the crew. Rather, the testimony of the master was that the master and crew were hired and paid by Panama Steamship Company, the Liberian corporate owner of the vessel (Tr. 70-71). There was also testimony that there was no connection whatever between National Bulk Carriers or its subsidiaries and Panama Steamship Company other than this sub-time charter of the Nikolos (Tr. 98).

The charter relationship is in essence no different from that which any passenger or shipper makes when he books space on a vessel. A time charter involves the booking of all of the space for a period of time. The passenger who books space for a thirty day cruise is doing the same thing on a smaller scale. If such, American contacts are to be the basis of application, then our labor laws would necessarily apply to nearly all foreign vessels touching our ports. Moreover, even if American investment interests did control the employment relationship, it would make no difference. In *Madison Shipping Corp. v. National Maritime Union*, E.D. Pa., Civil No. 27557 (1960, not yet reported), the controlling stock of the foreign corporate shipowner was admitted to be "at least 51 percent" owned by citizens of the United States. The shipowner sought an injunction against picketing by American unions and their international affiliates of the Liberian vessel, Madison Bell, at Philadelphia. The unions contended that Amer-

ican investment control should result in application of American labor law. District Judge Egan, nevertheless, granted a temporary restraining order on the ground that,

> ". . . on the present record the activities of the defendants appear to be an illegal interference with interstate and foreign commerce; that this dispute arises in the Port of Philadelphia on a foreign vessel, between a foreign employer and a foreign crew operating under articles of agreement made abroad under the laws of another nation; that the Norris-LaGuardia Act has no application in a dispute of this kind; and that this Court has jurisdiction of the parties and of the controversy." (Memorandum Opinion, January 16, 1950)

There can be little doubt of the correctness of his rejection of the contention, novel indeed from a union, that nationality of stockholders should outweigh not only the place of incorporation but also the place of hire, the nationality of the workers and the place of performance in determining law applicable to making a contract of employment and the standard of wages to be included in it. Surely the Shell Oil Company is not to bargain in Holland for its American employees working in the United States because of Dutch investment interests. Nor can the United Auto Workers picket General Motors in protest of the German standards of wages provided for in contracts made by its Opel subsidiary for German workers in German plants. Yet those are no different than the results petitioners seek here.

Petitioners cite one case in support of their theory, *Peninsular & Occidental Steamship Co.*, 120 N.L.R.B. 1097. There the Board took jurisdiction for a repre-

sentative election over two Liberian flag vessels. In its decision, the Board found on the basis of many factors not present in this case, including control by the named American shipowner, ". . . that the *Florida* and *Southern Cross* may not properly be considered for jurisdictional purposes as foreign vessels." (120 N.L.R.B. at 1101). In doing so it clearly violated Article XV of the Treaty of Friendship, Commerce and Navigation Between The United States and the Republic of Liberia, which requires that nationality of vessels be determined solely by registration:

"ARTICLE XV

> "Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown." (54 Stat. 1745)

In fairness to the Board it should be said that the Treaty apparently was not called to its attention.

The truth is that the nationality of neither the stockholders or the corporation they control is of any importance. In *Foley Bros. Inc. v. Filardo*, supra, and *Air Line Dispatchers Assn. v. National Mediation Board*, supra, American law was held inapplicable despite the fact that the employers were American corporations. And in the *Benz* case, this Court did not even consider the nationality of stockholders worth mentioning.

Contrary to petitioners' repeated (Pet. Br. 17, 23)

but unsupported statement, an American shipowner could obtain an injunction under the facts of this record if it stood in the place of respondents.

G. If Petitioners Wish To Enlarge The Expressly Limited Protection Congress Has Provided The American Merchant Marine They Should Address Themselves To It, Not The Courts.

Recognizing that nothing in the Norris-LaGuardia Act or its legislative history evinces a Congressional policy to apply it to a dispute involving employment aboard a foreign flag vessel temporarily in an American port, petitioners seek to find that missing Congressional intent in other legislation designed to protect the American merchant marine (Pet. Br. 16-17). Congressional action in that respect, however, clearly shows the opposite. Only the coastal trade is restricted to American vessels. There is no such restriction on international commerce. The very fact that it provides, at its expense as shipper, that 50% of government cargo be carried in American ships refutes the idea that a monopoly is intended even for such shipments. The fact that it subsidizes certain regular berth line operators in international commerce recognizes that foreign vessels have a competitive advantage in that field. It provides no subsidy for tramp or bulk cargo vessels.

Moreover, petitioner's argument ignores other factors which Congress must consider. Thus, the main emphasis of our foreign policy in the economic field has been to promote the development of the economies of our allies. It is common knowledge that among these

nations such as Great Britain, Japan, Norway and Greece depend to a considerable extent on the earnings of their shipping industry in foreign trade. Further it has been the policy of this country to encourage American investment abroad. And the Maritime Administration specifically encourages American ownership of Liberian, Panamanian an Honduran registered vessels. See Maritime Administration Policy Statement of November 5, 1956, 21 Fed. Reg. 8588 (1956), as amended, 21 Fed. Reg. 8920 (1956), 22 Fed. Reg. 4289 (1957), 22 Fed. Reg. 4448 (1957), 22 Fed. Reg. 7397 (1957), 23 Fed. Reg. 5956 (1958).

The importance of these American owned flags of convenience vessels has been stressed to Congress by the Department of Defense. In February, 1959, Vice Admiral Ralph E. Wilson, Deputy Chief of Naval Operations (Logistics) wrote to Senator Butler in part as follows:

> "More than half of the U. S. controlled tanker tonnage is registered under foreign flags.
>
> "Over the past few months, increasing pressure has been exerted against 'flags of convenience' by foreign shipping interests and maritime labor organizations . . . (which) threaten to make it economically impracticable for American owners to operate their ships under 'flags of convenience'. This raises the immediate question as to what steps should be taken to insure the continued availability of these ships for purposes of national defense." (105 Cong. Rec. 6014, Daily ed. Apr. 25, 1959).

To the same effect see also The Role of the U. S. Merchant Marine in National Security, Publication 748 National Academy of Sciences-National Research Council, at 55-60 (1959).

Finally petitioners' argument overlooks the probability of retaliative action by other nations which might impair even the commerce carried by the subsidized American Merchant Marine if this nation were to try to regulate the internal economies of foreign flag vessels.

If petitioners wish further protection for the American Merchant Marine than that which Congress has expressly provided they should address themselves to Congress; but, as the Court noted in *Lauritzen v. Larsen*, supra, not to the courts.

> "In apparent recognition of the weakness of the legal argument, a candid and brash appeal is made by respondent and by amicus briefs to extend the law to this situation as a means of benefiting seamen and enhancing the costs of foreign ship operation for the competitive advantage of our own. . . . The argument is misaddressed. It would be within the proprieties if addressed to Congress. Counsel familiar with the traditional attitude of this Court in maritime matters could not have intended it for us." (345 U.S. at 593)

CONCLUSION

Respondents respectfully pray that the issuance of the temporary injunction by the district court, as affirmed by the judgment of the court of appeals, be affirmed and the cause remanded to the district court for such further proceedings as may be appropriate on the questions of permanent injunctive relief and damages.

Respectfully submitted,

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